



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pro-Tem
File: B-231087
Date: April 29, 1988

DIGEST

General Accounting Office will not consider merits of protest filed after adverse action on a protest to the contracting agency where the agency-level protest was untimely.

DECISION

Pro-Tem protests the issuance by the U.S. Geological Survey (USGS) of purchase order No. 068900-88 to William Brooks for seismological surveys and data analysis in various South American countries. Pro-Tem contends that contract award to Brooks on a sole-source basis was improper because USGS should have known that Pro-Tem also could do the work.

We dismiss the protest.

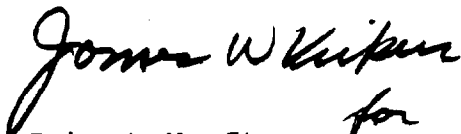
A synopsis of the USGS requirement was published in the Commerce Business Daily (CBD) on February 1, 1988. Concerns having the ability to furnish the services described were requested to provide the USGS procuring office with written responses within 30 calendar days from the date of the synopsis (or by March 2). The CBD notice also advised that the government proposed to negotiate a contract for the services with William Brooks on a sole-source basis, but would give consideration to firms responding to the notice.

The record indicates that since no qualified firms responded to the notice the purchase order was awarded to Brooks on March 4. Pro-Tem, which had not responded, then protested to USGS on March 17 and April 4, but the protests were denied by the agency because Pro-Tem was determined to be unqualified to provide the required services and also because it had not responded to the CBD notice. Pro-Tem then filed this protest with our Office.

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Our Bid Protest Regulations caution that where a company initially filed a protest on a matter with the contracting agency, we will consider a protest to our Office appealing the agency's adverse action only if the initial protest itself was timely filed. 4 C.F.R. § 21.2(a)(3) (1988). We have held that publication of a procurement in the CBD constitutes constructive notice to potential offerors of the solicitation and its contents. Aluminum Co. of America, B-227139, July 21, 1987, 87-2 CPD ¶ 72. Therefore, Pro-Tem, by virtue of the February 1 CBD notice, is charged with knowledge of the planned sole-source award and the March 2 closing date for written responses to the CBD notice. Lab Methods Corp., B-215526, July 17, 1984, 84-2 CPD ¶ 60. The firm consequently had to file a protest (or respond to the notice) by March 2. 4 C.F.R. § 21.2 (a)(1); Lab Methods Corp., B-215526, supra. Since the March 17 protest to USGS thus was untimely, we will not consider the merits of the protest to our Office.

The protest is dismissed.



for
Robert M. Strong
Deputy Associate
General Counsel